

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ELIZABETH SELTUN,
As Administratrix of the Estate of Amare Seltun,

Plaintiff,

vs.

**NOTICE OF MOTION
TO DISMISS
11-CV-0781A**

NEW YORK STATE OFFICE OF MENTAL
HEALTH (“OMH”); NEW YORK STATE
DEPARTMENT OF CORRECTIONS AND
COMMUNITY SUPERVISION (“DOCCS”);
BRIAN FISCHER, COMMISSIONER OF
DOCCS; MICHAEL F. HOGAN,
COMMISSIONER OF OMH; MARK L. BRADT,
SUPERINTENDENT OF ATTICA
CORRECTIONAL FACILITY; MAIZIE SHAW;
DAN COTOMAN; PRABHAKAR GUMBULA;
“L.T.”; and JANE AND JOHN DOES 1-10,

Defendants.

PLEASE TAKE NOTICE that defendants will move this Court, before the Hon. Richard Arcara, District Judge, at the United States Courthouse, 68 Court Street, Buffalo, New York, at a date and time to be set by the Court, for an order dismissing certain portions of the complaint pursuant to Fed.R.Civ.P. 12(b)(1) and (6) as is more fully set in the memorandum of law dated November 2, 2011, filed separately.

(1) dismissing the claims against DOCCS, OMH and defendants Fischer and Hogan in their official capacities in the first and second causes of action the grounds that this Court lacks subject matter jurisdiction pursuant to Fed.R.Civ.P. 12(b)(1);

(2) dismissing the negligence claims in the first and second causes of action against the remaining defendants the grounds that these claims fail to state a cause of action pursuant to Fed.R.Civ.P. 12(b)(6);

(3) dismissing the second, third, fourth, fifth, sixth and seventh causes of actions on the grounds that this Court lacks subject matter jurisdiction pursuant to Fed.R.Civ.P. 12(b)(1) and further that the claims in those causes of action against defendants Fischer and Bradt are barred by New York Correction Law Section 24; and

(2) awarding such other and further relief as is proper.

PLEASE TAKE FURTHER NOTICE that movants intend to serve reply papers and you are, therefore, required to file and serve opposing papers at least eight business days prior to the return date.

DATED: Buffalo, New York
November 3, 2011

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
Attorney for Defendants

BY:

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Defendants.

CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2011, I electronically filed the foregoing with the Clerk of the District Court using its CM/ECF system which would then electronically notify the following CM/ECF participants in this case:

Rahul Agarwal, Esq.
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